



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1598/6

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RM stay  
mtr

DOA:.....Koskinen, BB0401 - Direct marketing of cigarettes and tobacco products

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

p. 26

Don't Gen in 1-28-05

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

Under current law, generally, a person may not sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer without having a permit from DOR. Also, a person may not sell tobacco products in this state as a distributor or subjobber without having a permit from DOR. A "jobber" is any person who acquires cigarettes from manufacturers or distributors, stores the cigarettes, and sells the cigarettes to retailers for resale. A "subjobber" is any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and who sells such products to any person other than the ultimate consumer.

This bill prohibits a direct marketer from selling cigarettes or tobacco products to consumers in this state without having the appropriate permit from DOR. The bill defines "direct marketing" as publishing or making accessible an offer for the sale of cigarettes or tobacco products to consumers in this state, or selling cigarettes or tobacco products to consumers in this state, using any means by which the consumer is not physically present on a premise that sells cigarettes or tobacco products.

A direct marketer who sells cigarettes to consumers in this state must apply to DOR for a permit and submit a fee with the permit application based on the number

of cigarettes that the direct marketer sells annually to consumers in this state. If the direct marketer sells less than 600,000 cigarettes annually to consumers in this state, the fee is \$500. If the direct marketer sells 600,000 or more cigarettes annually to consumers in this state, the fee is \$1,000. A direct marketer who sells tobacco products to consumers in this state must apply to DOR for a permit and submit a \$500 fee with the application. Permits issued to direct marketers expire each year on December 31.

Under the bill, DOR will not issue a permit to a direct marketer unless the direct marketer certifies to DOR that all sales of cigarettes or tobacco products to consumers in this state will be credit card transactions; that the invoices for all shipments of cigarettes or tobacco products will bear the direct marketer's name, address, and permit number; and that the direct marketer will provide DOR any information that DOR considers necessary for cigarette and tobacco products tax and permit purposes. The direct marketer may not sell any cigarettes or tobacco products unless the sales tax, use tax, cigarette tax, or tobacco products tax, as appropriate, has been paid on the sale of the cigarettes or tobacco products. In addition, a direct marketer may not sell cigarettes or tobacco products in this state unless the direct marketer has a mechanism, approved by DOR, for verifying the age of the purchaser, and the direct marketer receives from the purchaser, at the time of purchase, a copy or facsimile of an identification card and the name specified on the identification matches the name of the purchaser.

Under the bill, cigarettes and tobacco products may not be shipped to a person who is under 18 years of age and may not be shipped to a post-office box.

Under current law, a person may not sell cigarettes or tobacco products to consumers in this state unless the person obtains a license from each city, village, or town in which the person intends to sell cigarettes or tobacco products. The city, village, or town may charge not less than \$5 annually nor more than \$100 annually for such a license. Under the bill, no city, village, or town may issue such a license to any person who has an arrest or conviction record related to selling cigarettes or tobacco products or who has not submitted proof to the city, village, or town that he or she holds a valid retailer's permit issued by DOR.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

- 1           **SECTION 1.** 77.61 (11) of the statutes is amended to read:
- 2           77.61 (11) Any city, village or town clerk or other official whose duty it is to issue
- 3 licenses or permits to engage in a business involving the sale at retail of tangible
- 4 personal property subject to tax under this subchapter, or the furnishing of services

1 so subject to tax, shall, before issuing such license or permit, require proof that the  
2 person to whom such license or permit is to be issued is the holder of a seller's permit  
3 ~~as required by~~ or is registered to collect, report, and remit use tax under this  
4 subchapter or has been informed by an employee of the department that the  
5 department will issue a seller's permit to that person or register that person to  
6 collect, report, and remit use tax.

\*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

7 **SECTION 2.** 134.65 (1) of the statutes is amended to read:

8 134.65 (1) No person, except a person who holds a valid permit under s. 139.345  
9 or 139.795 and who sells cigarettes or tobacco products solely as a direct marketer,  
10 shall in any manner, or upon any pretense, or by any device, directly or indirectly sell,  
11 expose for sale, possess with intent to sell, exchange, barter, dispose of or give away  
12 any cigarettes or tobacco products to any person not holding a license as herein  
13 provided or a permit under ss. 139.30 to 139.41 or 139.79 without first obtaining a  
14 license from the clerk of the city, village or town wherein such privilege is sought to  
15 be exercised.

16 **SECTION 3.** 134.65 (1n) of the statutes is created to read:

17 134.65 (1n) (a) The department of revenue shall prepare an application form  
18 for licenses issued under this section. In addition to the information required under  
19 sub. (1m), the form shall require all of the following information:

- 20 1. The applicant's history relevant to the applicant's fitness to hold a license  
21 under this section.
- 22 2. The kind of license for which the applicant is applying.
- 23 3. The premises where cigarettes or tobacco products will be sold or stored.

**SECTION 3**

1           4. If the applicant is a corporation, the identity of the corporate officers and  
2 agent.

3           5. If the applicant is a limited liability company, the identity of the company  
4 members or managers and agent.

5           6. The applicant's trade name, if any.

6           7. Any other information required by the department.

7           (b) The department of revenue shall provide 1 copy of each application prepared  
8 under this subsection to each city, village, and town.

9           (c) Each applicant for a license under this section shall use the application form  
10 prepared under this subsection.

11           (d) 1. Each application for a license under this section shall be sworn to by the  
12 applicant and the applicant shall submit the application with the clerk of the city,  
13 village, or town where the intended place of sale is located.

14           2. Within 10 days of any change in any fact set forth in an application, the  
15 applicant or license holder shall file a written description of the change with the clerk  
16 of the city, village, or town where the application was submitted.

17           3. Any person may inspect applications submitted under this paragraph. The  
18 clerk of each city, village, or town where such applications are submitted shall retain  
19 all applications submitted under this paragraph, but may destroy all applications  
20 that have been retained for 5 years or longer.

21           **SECTION 4.** 134.65 (1r) of the statutes is created to read:

22           134.65 (1r) (a) No license under sub. (1) may be issued to any person to whom  
23 any of the following applies:

24           1. Subject to ss. 111.321, 111.322, and 111.335, the person has an arrest record  
25 or a conviction record.

1           2. Subject to ss. 111.321, 111.322, and 111.335, the person has been convicted  
2 of a felony, or as a repeat or habitual offender, unless pardoned.

3           3. The person has not submitted proof as provided under s. 77.61 (11).

4           (b) The requirements under par. (a) apply to all partners of a partnership, all  
5 members of limited liability company, all agents of a limited liability company or  
6 corporation, and all officers of a corporation. Subject to ss. 111.321, 111.322, and  
7 111.335, if a business entity has been convicted of a crime, the entity may not be  
8 issued a license under sub. (1) unless the entity has terminated its relationship with  
9 the individuals whose actions directly contributed to the conviction.

10          **SECTION 5.** 134.65 (2) (a) of the statutes is amended to read:

11           134.65 (2) (a) ~~Except~~ Subject to sub. (1r), and except as provided in par. (b),  
12 upon filing of a proper written application a license shall be issued on July 1 of each  
13 year or when applied for and continue in force until the following June 30 unless  
14 sooner revoked. The city, village or town may charge a fee for the license of not less  
15 than \$5 nor more than \$100 per year which shall be paid to the city, village or town  
16 treasurer before the license is issued.

17          **SECTION 6.** 134.65 (5) of the statutes is amended to read:

18           134.65 (5) Any person violating this section shall be fined not more than \$100  
19 ~~\$1,000~~ nor less than ~~\$25~~ \$500 for the first offense and not more than ~~\$200~~ \$5,000 nor  
20 less than ~~\$25~~ \$1,000 or imprisoned not exceeding 180 days or both for the 2nd or  
21 subsequent offense. ~~If upon such 2nd or subsequent violation, the person so violating~~  
22 ~~this section was personally guilty of a failure to exercise due care to prevent violation~~  
23 ~~thereof, the person shall be fined not more than \$300 nor less than \$25 or imprisoned~~  
24 ~~not exceeding 60 days or both. Conviction~~ Upon conviction of a 2nd or subsequent  
25 offense, the court shall immediately terminate the license of the person convicted of

1 being personally guilty of such failure to exercise due care and the person shall not  
2 be entitled to another license hereunder for a period of 5 years thereafter, nor shall  
3 the person in that period act as the servant or agent of a person licensed hereunder  
4 for the performance of the acts authorized by such license.

5 **SECTION 7.** 134.66 (1) (a) of the statutes is amended to read:

6 134.66 (1) (a) "Cigarette" has the meaning given in s. 139.30 ~~(1)~~ (1m).

7 **SECTION 8.** 134.66 (1) (am) of the statutes is created to read:

8 134.66 (1) (am) "Direct marketer" has the meaning given in s. 139.30 (2n).

9 **SECTION 9.** 134.66 (2) (a) of the statutes is amended to read:

10 134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or  
11 subjobber, no agent, employee or independent contractor of a retailer, direct  
12 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee  
13 of an independent contractor may sell or provide for nominal or no consideration  
14 cigarettes or tobacco products to any person under the age of 18, except as provided  
15 in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph  
16 for the purchase of cigarettes or tobacco products from his or her vending machine  
17 by a person under the age of 18 if the vending machine operator was unaware of the  
18 purchase.

19 **SECTION 10.** 134.66 (2) (am) of the statutes is amended to read:

20 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,  
21 subjobber, no agent, employee or independent contractor of a retailer, direct  
22 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee  
23 of an independent contractor may provide for nominal or no consideration cigarettes  
24 or tobacco products to any person except in a place where no person younger than 18  
25 years of age is present or permitted to enter unless the person who is younger than

1 18 years of age is accompanied by his or her parent or guardian or by his or her spouse  
2 who has attained the age of 18 years.

3 **SECTION 11.** 134.66 (2) (d) of the statutes is amended to read:

4 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber  
5 or retailer, or their employees or agents, may provide cigarettes or tobacco products  
6 for nominal or no consideration to any person under the age of 18.

7 **SECTION 12.** 134.66 (2) (e) of the statutes is amended to read:

8 134.66 (2) (e) No retailer or direct marketer may sell cigarettes in a form other  
9 than as a package or container on which a stamp is affixed under s. 139.32 (1).

10 **SECTION 13.** 134.66 (3m) of the statutes is created to read:

11 134.66 (3m) DEFENSE OF DIRECT MARKETER. Proof of all of the following facts by  
12 a direct marketer who sells cigarettes or tobacco products to a person under the age  
13 of 18 is a defense to any prosecution for a violation under sub. (2) (a):

14 (a) That the direct marketer used a mechanism, approved by the department  
15 of revenue, for verifying the age of the purchaser.

16 (b) That the purchaser falsely represented that he or she had attained the age  
17 of 18 and presented a copy or facsimile of an identification card.

18 (c) That the name and birthdate of the purchaser, as indicated by the purchaser,  
19 matched the name and birthdate on the identification presented under par. (b).

20 (d) That the sale was made in good faith, in reasonable reliance on the  
21 mechanism described in par. (a) and the representation and identification under  
22 pars. (b) and (c), and in the belief that the purchaser had attained the age of 18.

23 **SECTION 14.** 139.30 (1) of the statutes is renumbered 139.30 (1m).

24 **SECTION 15.** 139.30 (1d) of the statutes is created to read:

**SECTION 15**

1           139.30 (1d) “Bonded direct marketer” means any person who acquires  
2 unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages  
3 or other containers, stores them and sells them by direct marketing to consumers for  
4 their own personal use and who may also acquire stamped cigarettes from  
5 manufacturers or distributors for such sales.

6           **SECTION 16.** 139.30 (1s) of the statutes is created to read:

7           139.30 (1s) “Consumer” means any individual who receives cigarettes for his  
8 or her personal use or consumption or any individual who has title to or possession  
9 of cigarettes for any purpose other than for sale or resale.

10          **SECTION 17.** 139.30 (2n) of the statutes is created to read:

11          139.30 (2n) “Direct marketer” means a bonded direct marketer or a nonbonded  
12 direct marketer.

13          **SECTION 18.** 139.30 (2p) of the statutes is created to read:

14          139.30 (2p) “Direct marketing” means publishing or making accessible an offer  
15 for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers  
16 in this state, using any means by which the consumer is not physically present at the  
17 time of sale on a premise that sells cigarettes.

18          **SECTION 19.** 139.30 (3) of the statutes is amended to read:

19          139.30 (3) “Distributor” means any person who acquires unstamped cigarettes  
20 from the manufacturer thereof, affixes stamps to the packages or other containers,  
21 stores them and sells them to other permittees or to retailers for resale ~~or~~ and who  
22 acquires may acquire stamped cigarettes from another permittee manufacturers or  
23 distributors for such sales.

24          **SECTION 20.** 139.30 (4n) of the statutes is created to read:

25          139.30 (4n) “Identification card” has the meaning given in s. 134.66 (1) (c).



1           **SECTION 21.** 139.30 (7) of the statutes is amended to read:

2           139.30 (7) “Manufacturer” means any person who directly manufactures  
3 cigarettes for the purpose of sale, including the authorized agent of a person who  
4 directly manufactures cigarettes for the purpose of sale.

5           **SECTION 22.** 139.30 (8d) of the statutes is created to read:

6           139.30 (8d) “Nonbonded direct marketer” means any person who acquires  
7 stamped cigarettes from the manufacturers or distributors, stores them, and sells  
8 them by direct marketing to consumers for their own personal use.

9           **SECTION 23.** 139.30 (8s) of the statutes is created to read:

10          139.30 (8s) “Person” means any individual, sole proprietorship, partnership,  
11 limited liability company, corporation, or association, or any owner of a single-owner  
12 entity that is disregarded as a separate entity under ch. 71.

13          **SECTION 24.** 139.30 (10) of the statutes is amended to read:

14          139.30 (10) “Retailer” ~~means any person who sells, exposes for sale or possesses~~  
15 ~~with intent to sell to consumers any cigarettes~~ has the meaning given in s. 134.66 (1)  
16 (g).

17          **SECTION 25.** 139.32 (1) of the statutes is amended to read:

18          139.32 (1) The tax imposed by s. 139.31 (1) shall be paid. To evidence the  
19 payment, the department shall provide stamps. A person who has paid the tax shall  
20 affix stamps of the proper denomination to each package in which cigarettes are  
21 packed, prior to the first sale within this state. First sale does not include a sale by  
22 a manufacturer to a distributor or to a bonded direct marketer or by a distributor to  
23 a permittee who has obtained department approval as provided for in s. 139.321 (1)  
24 (a) 2. The tax shall be paid only once on each package or container.

25          **SECTION 26.** 139.32 (4) of the statutes is amended to read:

1           139.32 (4) In lieu of stamps the secretary may authorize impressions applied  
2           by the use of ~~meter~~ machines. The secretary shall prescribe by rule the type of  
3           impression and the kind of machines which may be used.

4           **SECTION 27.** 139.32 (5) of the statutes is amended to read:

5           139.32 (5) Manufacturers, bonded direct marketers, and distributors having  
6           ~~a permit from the secretary who are authorized by the department to purchase tax~~  
7           stamps shall receive a discount of 1.6% of the tax paid on stamp purchases.

8           **SECTION 28.** 139.32 (5m) of the statutes is amended to read:

9           139.32 (5m) Distributors, bonded direct marketers, and manufacturers shall  
10          pay to the department the cost of printing and shipping those stamps.

11          **SECTION 29.** 139.32 (6) of the statutes is amended to read:

12          139.32 (6) Manufacturers, bonded direct marketers, and distributors having  
13          ~~a permit from the secretary who are authorized by the department to purchase tax~~  
14          stamps may purchase stamps on credit. The secretary may require manufacturers,  
15          bonded direct marketers, and distributors who purchase stamps on credit to file  
16          under the conditions prescribed by the secretary by rule.

17          **SECTION 30.** 139.321 (1) (intro.) of the statutes is amended to read:

18          139.321 (1) (intro.) It is unlawful for any person to possess ~~in excess of 400~~  
19          cigarettes unless the required stamps are properly affixed as provided in ss. 139.32  
20          (1) and 139.33 (4).

21          **SECTION 31.** 139.321 (1) (a) 1. of the statutes is amended to read:

22          139.321 (1) (a) 1. Manufacturers, bonded direct marketers, distributors or  
23          warehouse operators possessing valid permits issued by the secretary.

24          **SECTION 32.** 139.33 (3) of the statutes is amended to read:

1           139.33 (3) No person other than a member of the armed forces, as specified in  
2           this subsection, a licensed distributor, or a bonded direct marketer who is authorized  
3           by the department to purchase and affix tax stamps may import into this state ~~more~~  
4           ~~than 400~~ cigarettes on which the excise tax imposed by s. 139.31 has not been paid  
5           and the container of which does not bear proper stamps. Within 15 days, any such  
6           person importing cigarettes shall file a declaration of such cigarettes imported and  
7           shall remit therewith the tax on such cigarettes imposed by this section. Members  
8           of the armed forces shall not be required to report or pay the tax on cigarettes in their  
9           possession if such cigarettes are issued to them by the U.S. government or any of its  
10          subdivisions or were purchased in any armed forces post exchange or service store  
11          for their personal use or consumption. If the use tax imposed by this section is not  
12          paid when due, it shall become delinquent and the person liable for it shall pay, in  
13          addition, a penalty of \$25 for each 200 cigarettes. Interest on the delinquent tax and  
14          penalty shall accrue at the rate of 1.5% per month or each fraction of a month from  
15          the date the tax became due until paid.

16           **SECTION 33.** 139.34 (1) (a) of the statutes is amended to read:

17           139.34 (1) (a) No person may manufacture cigarettes in this state or sell  
18           cigarettes in this state as a distributor, manufacturer, jobber, vending machine  
19           operator, direct marketer, or multiple retailer and no person may operate a  
20           warehouse in this state for the storage of cigarettes for another person without first  
21           filing an application for and obtaining the proper permit to perform such operations  
22           from the department.

23           **SECTION 34.** 139.34 (1) (b) of the statutes is repealed.

24           **SECTION 35.** 139.34 (1) (c) (intro.) of the statutes is amended to read:

1           139.34 (1) (c) (intro.) ~~Subject to ss. 111.321, 111.322 and 111.335, no~~ No permit  
2 under this section may be granted to any person to whom any of the following applies:

3           **SECTION 36.** 139.34 (1) (c) 1. to 6. of the statutes are repealed.

4           **SECTION 37.** 139.34 (1) (c) 1m. of the statutes is created to read:

5           139.34 (1) (c) 1m. Subject to ss. 111.321, 111.322, and 111.335, the person has  
6 an arrest record or a conviction record.

7           **SECTION 38.** 139.34 (1) (c) 2m. of the statutes is created to read:

8           139.34 (1) (c) 2m. Subject to ss. 111.321, 111.322, and 111.335, the person has  
9 been convicted of a felony, or as a repeat or habitual offender, unless pardoned.

10          **SECTION 39.** 139.34 (1) (c) 3m. of the statutes is created to read:

11          139.34 (1) (c) 3m. The person has not submitted proof as provided under s.  
12 77.61 (11).

13          **SECTION 40.** 139.34 (1) (cm) of the statutes is created to read:

14          139.34 (1) (cm) The requirements under par. (c) apply to all partners of a  
15 partnership, all members of a limited liability company, all agents, director, and  
16 shareholders, of a limited liability company or corporation, and all officers of a  
17 corporation. Subject to ss. 111.321, 111.322, and 111.335, if a business entity has  
18 been convicted of a crime, the entity may not be issued a permit under this subsection  
19 unless the entity has terminated its relationship with the individuals whose actions  
20 directly contributed to the conviction.

21          **SECTION 41.** 139.34 (3) of the statutes is amended to read:

22          139.34 (3) No distributor or bonded direct marketer may affix stamps to  
23 cigarette packages, as provided in s. 139.32, unless the distributor or bonded direct  
24 marketer certifies to the department, in a manner prescribed by the department,

1 that the distributor or bonded direct marketer purchases cigarettes directly from a  
2 manufacturer.

3 **SECTION 42.** 139.34 (4) of the statutes is amended to read:

4 139.34 (4) A separate permit shall be required of and issued to each class of  
5 permittee and the holder of any permit shall perform only the operations thereby  
6 authorized. Such permit shall not be transferable from one person to another or from  
7 one premises to another. A separate permit shall be required for each place where  
8 cigarettes are stamped or where cigarettes are stored for sale at wholesale ~~or~~,  
9 through vending machines or multiple retail outlets, or by direct marketing.

10 **SECTION 43.** 139.34 (6) of the statutes is amended to read:

11 139.34 (6) A vending machine operator or a multiple retailer may acquire  
12 unstamped cigarettes from the manufacturers thereof and affix the stamps to  
13 packages or other containers only if the vending machine operator or multiple  
14 retailer also holds a permit as a distributor or bonded direct marketer.

15 **SECTION 44.** 139.34 (8) of the statutes is amended to read:

16 139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on  
17 the premises described in the permit. The warehouse permit shall not authorize the  
18 holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a  
19 manufacturer, bonded direct marketer, or distributor may be delivered only to a  
20 person holding a permit as a manufacturer ~~or~~, distributor, or bonded direct marketer  
21 who is authorized by the department to purchase and affix tax stamps.

22 **SECTION 45.** 139.345 of the statutes is created to read:

23 **139.345 Direct marketing.** (1) (a) (intro.) No person may sell cigarettes to  
24 consumers in this state as a direct marketer or solicit sales of cigarettes to consumers  
25 in this state by direct marketing unless the person has obtained a permit from the

1 department to make such sales or solicitations. The person shall file an application  
2 for a permit under this subsection with the department, in the manner prescribed  
3 by the department, and shall submit the following fee with the application:

4 1. If the person sells less than 600,000 cigarettes annually to consumers in this  
5 state by direct marketing, \$500.

6 2. If the person sells 600,000 or more cigarettes annually to consumers in this  
7 state by direct marketing, \$1,000.

8 (b) A permit issued under par. (a) expires on December 31 of each year.

9 (c) The department may not issue a permit to a person under par. (a) unless the  
10 person certifies to the department, in the manner prescribed by the department, that  
11 the person shall acquire stamped cigarettes from a licensed distributor or  
12 unstamped cigarettes from the manufacturer thereof, pay the tax imposed under this  
13 subchapter on all unstamped cigarettes and affix stamps to the cigarette packages  
14 or containers as provided under s. 139.32 (1), store such packages or containers, and  
15 sell only such packages or containers to consumers in this state by direct marketing;  
16 or acquire cigarettes from a distributor, to the packages or containers of which  
17 stamps have been affixed as provided under s. 139.32 (1), and sell only such packages  
18 or containers to consumers in this state by direct marketing.

19 (d) No person may be issued a permit under this subsection unless the person  
20 certifies to the department, in the manner prescribed by the department, that all  
21 cigarette sales to consumers in this state shall be credit card transactions; that the  
22 invoices and all means of solicitation for all shipments of cigarette sales from the  
23 person shall bear the person's name and address and permit ultimately issued under  
24 this subsection; and that the person shall provide the department any information  
25 the department considers necessary to administer this section.

1           (2) (a) No person may purchase tax stamps in excess of the number of cigarette  
2 sales specified in his or her permit under sub. (1) (a) unless the person pays the  
3 permit fee under sub. (1) (a) that is applicable to the excess amount.

4           (b) No person may sell cigarettes in excess of the number of cigarette sales  
5 specified in his or her permit under sub. (1) (a) unless the person pays the permit fee  
6 under sub. (1) (a) that is applicable to the excess sales. Any person who sells  
7 cigarettes in excess of the number of cigarette sales specified in his or her permit  
8 shall pay a penalty to the department of \$1,000 or an amount that is equal to \$50 for  
9 every 200 cigarettes, or fraction of 200 cigarettes, whichever is greater.

10          (3) (a) No person may sell cigarettes to consumers in this state by direct  
11 marketing unless the tax imposed under s. 139.31 (1) is paid on such cigarettes and  
12 stamps are affixed to the cigarette packages or containers as provided under s.  
13 139.32.

14          (b) No person may sell cigarettes to consumers in this state by direct marketing  
15 unless the tax imposed under s. 77.52 or 77.53 is paid on the sale of such cigarettes.

16          (c) No person may sell cigarettes to consumers in this state by direct marketing  
17 unless the cigarette brands are approved by the department and listed in the  
18 directory of certified tobacco product manufacturers and brands as provided under  
19 s. 895.12 (2) (b).

20          (4) No person may sell cigarettes to a consumer in this state by direct  
21 marketing unless the person verifies the consumer's identity and that the consumer  
22 is at least 18 years of age by any of the following methods:

23          (a) The person uses a database, approved by the department, that includes  
24 information based on public records to verify the consumer's age and identity.

1           (b) The person receives from the consumer, at the time of purchase, a notarized  
2           copy of an identification card, the name specified on the identification matches the  
3           name of the consumer, and the birth date on the identification verifies that the  
4           purchaser is at least 18 years of age.

5           (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),  
6           for verifying the age and identity of a consumer that is approved by the department.

7           (5) Any person who, without having a valid permit under sub. (1), sells or  
8           solicits sales of cigarettes to consumers in this state by direct marketing shall pay  
9           a penalty to the department of \$5,000 or an amount that is equal to \$50 for every 200  
10          cigarettes, or fraction of 200 cigarettes, sold to consumers in this state by direct  
11          marketing, whichever is greater.

12          (6) (a) No sale of cigarettes to a consumer in this state by direct marketing may  
13          exceed 10 cartons for each invoice or 20 cartons in a 30-day period for each purchaser  
14          or address.

15          (b) Any person who sells cigarettes that exceed the maximum amounts under  
16          par. (a) shall pay a penalty to the department of \$5,000 or an amount that is equal  
17          to \$50 for every 200 cigarettes, or major fraction of 200 cigarettes, sold above the  
18          maximum amounts, whichever is greater.

19          (c) Any person who purchases cigarettes that exceed the maximum amounts  
20          under par. (a) shall apply for a permit under s. 139.34 and shall pay a penalty to the  
21          department of \$25 for every 200 cigarettes, or fraction of 200 cigarettes, purchased  
22          above the maximum amounts.

23          (7) No cigarettes may be shipped to a person who is under 18 years of age and  
24          no cigarettes may be shipped to a post-office box. Every package used to ship  
25          cigarettes that are sold as provided under this section and delivered to a person in



1 this state shall be clearly labeled to indicate that the package contains cigarettes and  
2 may not be delivered to a person who is under 18 years of age.

3 **SECTION 46.** 139.35 (1) of the statutes is amended to read:

4 139.35 (1) TRANSFERS. No person may give, sell or lend any stamps to another  
5 and no person may accept, purchase or borrow any stamps from another. All sales  
6 and transfers of stamps may be made only by the secretary to permit holding  
7 manufacturers and, distributors, and bonded direct marketers who are authorized  
8 by the department to purchase and affix tax stamps.

9 **SECTION 47.** 139.37 (1) (a) of the statutes is amended to read:

10 139.37 (1) (a) No person shall sell cigarettes or ~~take orders for cigarettes for~~  
11 ~~resale~~ solicit cigarette sales in this state for any manufacturer or permittee without  
12 first obtaining a unless the person has filed an application for and obtained a valid  
13 certificate under s. 73.03 (50) and a salesperson's permit from the department of  
14 revenue. No manufacturer or permittee shall authorize any person to sell cigarettes  
15 ~~or take orders for cigarettes~~ solicit cigarette sales in this state ~~without first having~~  
16 ~~such person secure~~ unless the person has filed an application for and obtained a valid  
17 certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize  
18 the sale or solicitation of cigarettes in this state unless the person has filed an  
19 application for and obtained a valid certificate under s. 73.03 (50) and a valid permit  
20 under s. 139.34. The department shall issue the required number of permits to  
21 ~~manufacturers and permittees~~ who hold a valid certificate issued under s. 73.03 (50).  
22 Each application for a permit shall disclose the name and address of the employer  
23 or the person for whom the sales person is soliciting and such permit shall remain  
24 effective only while the salesperson represents such named employer or person. If  
25 such salesperson is thereafter employed by another ~~manufacturer or permittee~~

1 person, the salesperson shall obtain a new salesperson's permit. Each ~~manufacturer~~  
2 and permittee shall notify the department within 10 days after the resignation or  
3 dismissal of any such salesperson holding a permit.

4 **SECTION 48.** 139.38 (1) of the statutes is amended to read:

5 139.38 (1) Every manufacturer located out of the state shall keep records of all  
6 sales of cigarettes shipped into this state. Every manufacturer located in the state  
7 shall keep records of production, sales and withdrawals of cigarettes. Every  
8 distributor and direct marketer shall keep records of purchases and sales of  
9 cigarettes. Every manufacturer, bonded direct marketer, and distributor ~~holding a~~  
10 ~~permit from the secretary with the right~~ who is authorized by the department to  
11 purchase and apply stamps shall also keep records of purchases and disposition of  
12 stamps. Every jobber, multiple retailer, and vending machine operator shall keep  
13 records of all purchases and disposition of cigarettes. Every warehouse operator  
14 shall keep records of receipts and withdrawals of cigarettes. All such records shall  
15 be accurate and complete and be kept in a manner prescribed by the secretary. These  
16 records shall be preserved on the premises described in the permit or license in such  
17 a manner as to ensure permanency and accessibility for inspection at reasonable  
18 hours by authorized personnel of the department.

19 **SECTION 49.** 139.38 (1m) of the statutes is created to read:

20 139.38 (1m) Records of purchases and sales of cigarettes under sub. (1) that  
21 are kept by direct marketers shall indicate, for each shipment of cigarettes into this  
22 state in the month preceding the report under sub. (2), the invoice date and number;  
23 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the  
24 manufacturer of the cigarettes shipped and the point of origin; the purchaser's name,  
25 address, and birth date; the name of the person to whom the cigarettes were shipped;

1 the address to which the cigarettes were shipped; and any other information the  
2 department requires.

3 **SECTION 50.** 139.38 (2) of the statutes is amended to read:

4 139.38 (2) (a) Except as provided in par. (b), every permittee manufacturer,  
5 distributor, jobber, and direct marketer shall render a true and correct invoice of  
6 every sale of cigarettes at ~~wholesale~~ and every permittee shall on or before the 15th  
7 day of each calendar month file a verified report of all cigarettes purchased, sold,  
8 received, warehoused or withdrawn during the preceding calendar month.

9 (b) The department may allow any jobber, multiple retailer, nonbonded direct  
10 marketer, or vending machine operator permittee who does not sell cigarettes, except  
11 for those on which the tax under this chapter is paid, to file a quarterly report. The  
12 quarterly report shall be filed on or before the 15th day of the next month following  
13 the close of each calendar quarter. The report shall specify the number of cigarettes  
14 purchased and sold during the preceding calendar quarter.

15 **SECTION 51.** 139.39 (6) of the statutes is amended to read:

16 139.39 (6) Sections 71.74 (1), (2), (10), (11) and (14), 71.77, 71.80 (12), 71.91 (1)  
17 (a) and (c) and (2) to (7), 71.92 and 73.0301 as they apply to the taxes under ch. 71  
18 apply to the taxes under this subchapter. Section 71.74 (13) as it applies to the  
19 collection of the taxes under ch. 71 applies to the collection of the taxes under this  
20 subchapter, except that the period during which notice of an additional assessment  
21 shall be given begins on the due date of the report under this subchapter. Section  
22 78.70 (6) as it applies to personal liability for paying taxes, interest, penalties, and  
23 other charges under ch. 78 applies to personal liability for paying taxes, interest,  
24 penalties, and other charges under this subchapter.

25 **SECTION 52.** 139.395 of the statutes is amended to read:

1           **139.395 Theft of tax moneys.** All cigarette tax moneys received by a  
2 distributor, bonded direct marketer, or manufacturer for the sale of cigarettes on  
3 which the tax under this subchapter has become due and has not been paid are trust  
4 funds in the hands of the distributor, bonded direct marketer, or manufacturer and  
5 are the property of this state. Any distributor, bonded direct marketer, or  
6 manufacturer who fraudulently withholds, appropriates or otherwise uses cigarette  
7 tax moneys that are the property of this state is guilty of theft under s. 943.20 (1),  
8 whether or not the distributor, bonded direct marketer, or manufacturer has or  
9 claims to have an interest in those moneys.

10           **SECTION 53.** 139.40 (2) of the statutes is amended to read:

11           139.40 (2) ~~If cigarettes which do not bear the proper tax stamps or on which~~  
12 ~~the tax has not been paid~~ Cigarettes that are so seized ~~they~~ as provided under sub.  
13 (1) may be given to law enforcement officers to use in criminal investigations or sold  
14 to qualified buyers by the secretary, without notice. If the cigarettes are sold, after  
15 deducting the costs of the sale and the keeping of storing the property, the proceeds  
16 of the sale shall be paid into the state treasury. If the secretary finds that such  
17 cigarettes may deteriorate or become unfit for use in criminal investigations or for  
18 sale or that those uses would otherwise be impractical, the secretary may order them  
19 destroyed or give them to a charitable or penal institution for free distribution to  
20 patients or inmates.

21           **SECTION 54.** 139.44 (3) of the statutes is amended to read:

22           139.44 (3) Any permittee who fails to keep the records required by ss. 139.30  
23 to 139.42 or 139.77 to 139.82 shall be fined not less than \$100 \$500 nor more than  
24 \$500 \$1,000 for the first offense and shall be fined not less than \$1,000 nor more than

1     \$5,000 or imprisoned not more than ~~6 months~~ 180 days or both for the 2nd or  
2     subsequent offense.

3           **SECTION 55.** 139.44 (4) of the statutes is amended to read:

4           139.44 (4) Any person who refuses to permit the examination or inspection  
5     authorized in s. 139.39 (2) or 139.83 may be fined not ~~more~~ less than \$500 nor more  
6     than \$1,000 or imprisoned not more than ~~90~~ 180 days or both. Such refusal shall be  
7     cause for immediate suspension or revocation of permit by the secretary.

8           **SECTION 56.** 139.44 (6m) of the statutes is created to read:

9           139.44 (6m) Any person who manufactures or sells cigarettes in this state  
10     without holding the proper permit issued under this subchapter is guilty of a Class  
11     I felony.

12          **SECTION 57.** 139.44 (7) of the statutes is amended to read:

13          139.44 (7) In addition to the penalties imposed for violation of ss. 139.30 to  
14     139.41 or 139.75 to 139.83 or any of the rules of the department, the permit of any  
15     person convicted of a 2nd or subsequent offense shall be automatically revoked ~~and~~  
16     ~~he or she, the person~~ shall not be granted another permit for a period of ~~2~~ 5 years  
17     following such revocation, ~~and, for the 5 year period following revocation, the person~~  
18     shall not act as the employee or agent of a permittee under this subchapter to perform  
19     acts authorized by any permit issued to the permittee under this subchapter.

20          **SECTION 58.** 139.45 of the statutes is amended to read:

21          **139.45 Prosecutions by attorney general.** Upon request by the secretary  
22     of revenue, the attorney general may represent this state or assist a district attorney  
23     in prosecuting any case arising under this subchapter or under ss. 134.65 and 134.66.

24          **SECTION 59.** 139.75 (2) of the statutes is amended to read:

1           139.75 (2) “Consumer” means any individual who receives tobacco products for  
2 his or her personal use or consumption or any person individual who has title to or  
3 possession of tobacco products ~~in storage for use or other consumption in this state~~  
4 any purpose other than for sale or resale.

5           **SECTION 60.** 139.75 (3g) of the statutes is created to read:

6           139.75 (3g) “Direct marketer” means any person who solicits or sells tobacco  
7 products to consumers in this state by direct marketing.

8           **SECTION 61.** 139.75 (3r) of the statutes is created to read:

9           139.75 (3r) “Direct marketing” means publishing or making accessible an offer  
10 for the sale of tobacco products to consumers in this state, or selling tobacco products  
11 to consumers in this state, using any means by which the consumer is not physically  
12 present on a premise that sells tobacco products.

13           **SECTION 62.** 139.75 (4) (a) of the statutes is amended to read:

14           139.75 (4) (a) Any person in this state engaged in the business of selling tobacco  
15 products ~~in this state~~ who brings, or causes to be brought, into this state from outside  
16 the state any tobacco products for sale;

17           **SECTION 63.** 139.75 (4) (c) of the statutes is amended to read:

18           139.75 (4) (c) Any person outside this state engaged in the business of selling  
19 tobacco products ~~outside this state~~ who ships or transports tobacco products to  
20 retailers in this state to be sold by those retailers.

21           **SECTION 64.** 139.75 (4) (cm) of the statutes is created to read:

22           139.75 (4) (cm) Any person outside this state engaged in the business of selling  
23 tobacco products who ships or transports tobacco products to consumers in this state.

24           **SECTION 65.** 139.75 (4n) of the statutes is created to read:

25           139.75 (4n) “Identification card” has the meaning given in s. 134.66 (1) (c).

1           **SECTION 66.** 139.75 (5s) of the statutes is created to read:

2           139.75 (5s) “Person” means any individual, sole proprietorship, partnership,  
3           limited liability company, corporation, or association, or any owner of a single-owner  
4           entity that is disregarded as a separate entity under ch. 71.

5           **SECTION 67.** 139.75 (7) of the statutes is amended to read:

6           139.75 (7) “Retail outlet” means each place of business from which tobacco  
7           products are sold to consumers by a retailer.

8           **SECTION 68.** 139.75 (8) of the statutes is amended to read:

9           139.75 (8) “Retailer” ~~means any person engaged in the business of selling~~  
10          ~~tobacco products to ultimate consumers~~ has the meaning given in s. 134.66 (1) (g).

11          **SECTION 69.** 139.75 (12) of the statutes is amended to read:

12          139.75 (12) “Tobacco products” means cigars; cheroots; stogies; periques;  
13          granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff;  
14          snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos;  
15          shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds  
16          and forms of tobacco prepared in such manner as to be suitable for chewing or  
17          smoking in a pipe or otherwise, or both for chewing and smoking; but “tobacco  
18          products” does not include cigarettes, as defined under s. 139.30 (1) (1m).

19          **SECTION 70.** 139.76 (3) of the statutes is created to read:

20          139.76 (3) Except as provided in sub. (2), no person may possess tobacco  
21          products in this state unless the tax imposed under sub. (1) is paid on such tobacco  
22          products.

23          **SECTION 71.** 139.78 (1m) of the statutes is created to read:

1           139.78 (1m) Except as provided in s. 139.76 (2), no person other than a  
2 distributor with a valid permit under s. 139.79 may import into this state tobacco  
3 products for which the tax imposed under s. 139.76 (1) has not been paid.

4           **SECTION 72.** 139.79 (title) of the statutes is amended to read:

5           **139.79 (title) Permits; distributor; direct marketer; subjobber.**

6           **SECTION 73.** 139.79 (1) of the statutes is amended to read:

7           139.79 (1) No person may engage in the business of a distributor, direct  
8 marketer, or subjobber of tobacco products at any place of business unless that  
9 person has filed an application for and obtained a permit from the department to  
10 engage in that business at such place.

11          **SECTION 74.** 139.79 (2) of the statutes is amended to read:

12          139.79 (2) Section 139.34 (1) ~~(b)~~ (c) to (f), (4) and (9) applies to the permits under  
13 this section.

14          **SECTION 75.** 139.795 of the statutes is created to read:

15          **139.795 Direct marketing.** (1) (a) No person may sell tobacco products by  
16 direct marketing to consumers in this state as a direct marketer or solicit sales of  
17 tobacco products to consumers in this state by direct marketing unless the person has  
18 obtained a permit from the department to make such sales or solicitations. The  
19 person shall file an application for a permit under this subsection with the  
20 department, in the manner prescribed by the department, and shall submit a \$500  
21 fee with the application.

22          (b) No person may be issued a permit under this subsection unless the person  
23 holds a valid distributor's permit under s. 139.79. Section 139.34 (1) (c) to (f), (7), and  
24 (9), as it applies to permits issued under s. 139.34, applies to permits issued under  
25 this subsection.



1 (c) A permit issued under this subsection expires on December 31 of each year.

2 (d) No person may be issued a permit under this subsection unless the person  
3 certifies to the department, in the manner prescribed by the department, that all  
4 tobacco product sales to consumers in this state shall be credit card transactions; that  
5 the invoices and all means of solicitation for all shipments of tobacco product sales  
6 from the person shall bear the person's name and address and permit ultimately  
7 issued under this subsection; and that the person shall provide the department any  
8 information the department considers necessary to administer this section.

9 (2) No person may sell tobacco products to consumers in this state by direct  
10 marketing unless the tax imposed under s. 139.76, and under s. 77.52 or 77.53, has  
11 been paid with regard to such products.

12 (3) No person may sell tobacco products to a consumer in this state by direct  
13 marketing unless the person does all of the following:

14 (a) The person uses a mechanism, approved by the department, to verify the  
15 consumer's age.

16 (b) The person receives from the consumer, at the time of purchase, a copy or  
17 facsimile of an identification card, the name specified on the identification matches  
18 the name of the consumer.

19 (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),  
20 for verifying the age and identity of a consumer that is approved by the department.

21 (4) Any person who, without having a valid permit under sub. (1), sells or  
22 solicits sales of tobacco products to consumers in this state by direct marketing shall  
23 pay a penalty to the department of \$5,000 or an amount that is equal to 50 percent  
24 of the tax due on the tobacco products the person sold, without having a valid permit  
25 under sub. (1), to consumers in this state by direct marketing, whichever is greater.

(5) No tobacco products may be shipped or delivered to a person who is under 18 years of age and no tobacco products may be shipped to a post-office box. Every package used to ship tobacco products that are sold as provided under this section and delivered to a person in this state shall be clearly labeled to indicate that the package contains tobacco products and may not be delivered to a person who is under 18 years of age.

SECTION 76. 139.81 (1) of the statutes is amended to read:

139.81 (1) No person may sell ~~or take orders for~~ tobacco products for resale ~~or solicit sales of tobacco products~~ in this state for any manufacturer or permittee unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit from the department. No manufacturer or permittee shall authorize any person to sell ~~or take orders for~~ tobacco products ~~or solicit sales of tobacco products~~ in this state unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit. No person may authorize the sale or solicitation of tobacco products in this state unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.79. Each application for a permit shall

disclose the name and address of the employer and shall remain effective only while the salesperson represents the named employer. If the salesperson is thereafter employed by another manufacturer or permittee person the salesperson shall obtain a new salesperson's permit. Each manufacturer and permittee shall notify the department within 10 days after the resignation or dismissal of any salesperson holding a permit.

SECTION 77. 139.81 (2) of the statutes is amended to read:

or the person for whom the salesperson is soliciting

or person  
or person

1           139.81 (2) Section 139.34 (1) ~~(b)~~ (c) to (e) applies to the permits under this  
2 section.

3           **SECTION 78.** 254.911 (1) of the statutes is amended to read:

4           254.911 (1) “Cigarette” has the meaning given in s. 139.30 ~~(1)~~ (1m).

5           **SECTION 79.** 891.455 (4) of the statutes is amended to read:

6           891.455 (4) The presumption under sub. (2) for cancers caused by smoking or  
7 tobacco product use shall not apply to any municipal fire fighter who smokes  
8 cigarettes, as defined in s. 139.30 ~~(1)~~ (1m), or who uses a tobacco product, as defined  
9 in s. 139.75 (12), after January 1, 2001.

10           **SECTION 9441. Effective dates; revenue.**

11           (1) DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS. The repeal of  
12 section 139.34 (1) (b) and 139.34 (1) (c) 1. to 6. of the statutes, the renumbering of  
13 section 139.30 (1) of the statutes, the amendment of sections 77.61 (11), 134.65 (1),  
14 134.65 (2) (a), 134.65 (5), 134.66 (1) (a), 134.66 (2) (a), 134.66 (2) (am), 134.66 (2) (d),  
15 134.66 (2) (e), 139.30 (3), 139.30 (7), 139.30 (10), 139.32 (1), 139.32 (4), 139.32 (5),  
16 139.32 (5m), 139.32 (6), 139.321 (1) (intro.), 139.321 (1) (a) 1., 139.33 (3), 139.34 (1)  
17 (a), 139.34 (1) (c) (intro.), 139.34 (3), 139.34 (4), 139.34 (6), 139.34 (8), 139.35 (1),  
18 139.37 (1) (a), 139.38 (1), 139.38 (2), 139.39 (6), 139.395, 139.40 (2), 139.44 (3), 139.44  
19 (4), 139.44 (7), 139.45, 139.75 (2), 139.75 (4) (a), 139.75 (4) (c), 139.75 (7), 139.75 (8),  
20 139.75 (12), 139.79 (title), 139.79 (1), 139.79 (2), 139.81 (1), 139.81 (2), 254.911 (1) and  
21 891.455 (4), of the statutes and the creation of sections 134.65 (1n), 134.65 (1r),  
22 134.66 (1) (am), 134.66 (3m), 139.30 (1d), 139.30 (1s), 139.30 (2n), 139.30 (2nn),  
23 139.30 (2p), 139.30 (4n), 139.30 (8s), 139.34 (1) (c) 1m., 139.34 (1) (c) 2m., 139.34 (1)  
24 (c) 3m., 139.34 (1) (cm), 139.345, 139.38 (1m), 139.44 (6m), 139.75 (3g), 139.75 (3r),

3. (END)

## Kreye, Joseph

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**From:** Kraus, Jennifer - DOA  
**Sent:** Friday, January 28, 2005 10:45 AM  
**To:** Kreye, Joseph  
**Subject:** FW: LRB Draft: 05-1598/6 Direct marketing of cigarettes and tobacco products --  
CONFIDENTIAL

**Importance:** High



05-1598/6

Please add if possible.

-----Original Message-----

**From:** Lashore, Patricia M  
**Sent:** Friday, January 28, 2005 10:35 AM  
**To:** Kraus, Jennifer - DOA  
**Subject:** LRB Draft: 05-1598/6 Direct marketing of cigarettes and tobacco products -- CONFIDENTIAL  
**Importance:** High

Comment on this version:

This revision appears to have all the corrections, except the following (added to cigarette, but not tobacco) and should be added if possible:

Pg. 26, Line 18 & 19: "disclose the name and addresss of the employer OR THE PERSON FOR WHOM THE SALES PERSON IS SOLICITING and shall remain effective only while the salesperson represents the named employer OR PERSON. ..."



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1598/7  
JK:kjf/lk/cjs/wlj:pg

DOA:.....Koskinen, BB0401 - Direct marketing of cigarettes and tobacco products

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

---

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

Under current law, generally, a person may not sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer without having a permit from DOR. Also, a person may not sell tobacco products in this state as a distributor or subjobber without having a permit from DOR. A "jobber" is any person who acquires cigarettes from manufacturers or distributors, stores the cigarettes, and sells the cigarettes to retailers for resale. A "subjobber" is any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and who sells such products to any person other than the ultimate consumer.

This bill prohibits a direct marketer from selling cigarettes or tobacco products to consumers in this state without having the appropriate permit from DOR. The bill defines "direct marketing" as publishing or making accessible an offer for the sale of cigarettes or tobacco products to consumers in this state, or selling cigarettes or tobacco products to consumers in this state, using any means by which the consumer is not physically present on a premise that sells cigarettes or tobacco products.

A direct marketer who sells cigarettes to consumers in this state must apply to DOR for a permit and submit a fee with the permit application based on the number

of cigarettes that the direct marketer sells annually to consumers in this state. If the direct marketer sells less than 600,000 cigarettes annually to consumers in this state, the fee is \$500. If the direct marketer sells 600,000 or more cigarettes annually to consumers in this state, the fee is \$1,000. A direct marketer who sells tobacco products to consumers in this state must apply to DOR for a permit and submit a \$500 fee with the application. Permits issued to direct marketers expire each year on December 31.

Under the bill, DOR will not issue a permit to a direct marketer unless the direct marketer certifies to DOR that all sales of cigarettes or tobacco products to consumers in this state will be credit card transactions; that the invoices for all shipments of cigarettes or tobacco products will bear the direct marketer's name, address, and permit number; and that the direct marketer will provide DOR any information that DOR considers necessary for cigarette and tobacco products tax and permit purposes. The direct marketer may not sell any cigarettes or tobacco products unless the sales tax, use tax, cigarette tax, or tobacco products tax, as appropriate, has been paid on the sale of the cigarettes or tobacco products. In addition, a direct marketer may not sell cigarettes or tobacco products in this state unless the direct marketer has a mechanism, approved by DOR, for verifying the age of the purchaser, and the direct marketer receives from the purchaser, at the time of purchase, a copy or facsimile of an identification card and the name specified on the identification matches the name of the purchaser.

Under the bill, cigarettes and tobacco products may not be shipped to a person who is under 18 years of age and may not be shipped to a post-office box.

Under current law, a person may not sell cigarettes or tobacco products to consumers in this state unless the person obtains a license from each city, village, or town in which the person intends to sell cigarettes or tobacco products. The city, village, or town may charge not less than \$5 annually nor more than \$100 annually for such a license. Under the bill, no city, village, or town may issue such a license to any person who has an arrest or conviction record related to selling cigarettes or tobacco products or who has not submitted proof to the city, village, or town that he or she holds a valid retailer's permit issued by DOR.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

- 1           **SECTION 1.** 77.61 (11) of the statutes is amended to read:
- 2           77.61 (11) Any city, village or town clerk or other official whose duty it is to issue
- 3 licenses or permits to engage in a business involving the sale at retail of tangible
- 4 personal property subject to tax under this subchapter, or the furnishing of services

1 so subject to tax, shall, before issuing such license or permit, require proof that the  
2 person to whom such license or permit is to be issued is the holder of a seller's permit  
3 as required by or is registered to collect, report, and remit use tax under this  
4 subchapter or has been informed by an employee of the department that the  
5 department will issue a seller's permit to that person or register that person to  
6 collect, report, and remit use tax.

\*\*\*\*NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

7 **SECTION 2.** 134.65 (1) of the statutes is amended to read:

8 134.65 (1) No person, except a person who holds a valid permit under s. 139.345  
9 or 139.795 and who sells cigarettes or tobacco products solely as a direct marketer,  
10 shall in any manner, or upon any pretense, or by any device, directly or indirectly sell,  
11 expose for sale, possess with intent to sell, exchange, barter, dispose of or give away  
12 any cigarettes or tobacco products to any person not holding a license as herein  
13 provided or a permit under ss. 139.30 to 139.41 or 139.79 without first obtaining a  
14 license from the clerk of the city, village or town wherein such privilege is sought to  
15 be exercised.

16 **SECTION 3.** 134.65 (1n) of the statutes is created to read:

17 134.65 (1n) (a) The department of revenue shall prepare an application form  
18 for licenses issued under this section. In addition to the information required under  
19 sub. (1m), the form shall require all of the following information:

- 20 1. The applicant's history relevant to the applicant's fitness to hold a license  
21 under this section.
- 22 2. The kind of license for which the applicant is applying.
- 23 3. The premises where cigarettes or tobacco products will be sold or stored.



1           4. If the applicant is a corporation, the identity of the corporate officers and  
2 agent.

3           5. If the applicant is a limited liability company, the identity of the company  
4 members or managers and agent.

5           6. The applicant's trade name, if any.

6           7. Any other information required by the department.

7           (b) The department of revenue shall provide 1 copy of each application prepared  
8 under this subsection to each city, village, and town.

9           (c) Each applicant for a license under this section shall use the application form  
10 prepared under this subsection.

11           (d) 1. Each application for a license under this section shall be sworn to by the  
12 applicant and the applicant shall submit the application with the clerk of the city,  
13 village, or town where the intended place of sale is located.

14           2. Within 10 days of any change in any fact set forth in an application, the  
15 applicant or license holder shall file a written description of the change with the clerk  
16 of the city, village, or town where the application was submitted.

17           3. Any person may inspect applications submitted under this paragraph. The  
18 clerk of each city, village, or town where such applications are submitted shall retain  
19 all applications submitted under this paragraph, but may destroy all applications  
20 that have been retained for 5 years or longer.

21           **SECTION 4.** 134.65 (1r) of the statutes is created to read:

22           134.65 (1r) (a) No license under sub. (1) may be issued to any person to whom  
23 any of the following applies:

24           1. Subject to ss. 111.321, 111.322, and 111.335, the person has an arrest record  
25 or a conviction record.

1           2. Subject to ss. 111.321, 111.322, and 111.335, the person has been convicted  
2 of a felony, or as a repeat or habitual offender, unless pardoned.

3           3. The person has not submitted proof as provided under s. 77.61 (11).

4           (b) The requirements under par. (a) apply to all partners of a partnership, all  
5 members of limited liability company, all agents of a limited liability company or  
6 corporation, and all officers of a corporation. Subject to ss. 111.321, 111.322, and  
7 111.335, if a business entity has been convicted of a crime, the entity may not be  
8 issued a license under sub. (1) unless the entity has terminated its relationship with  
9 the individuals whose actions directly contributed to the conviction.

10          **SECTION 5.** 134.65 (2) (a) of the statutes is amended to read:

11           134.65 (2) (a) ~~Except~~ Subject to sub. (1r), and except as provided in par. (b),  
12 upon filing of a proper written application a license shall be issued on July 1 of each  
13 year or when applied for and continue in force until the following June 30 unless  
14 sooner revoked. The city, village or town may charge a fee for the license of not less  
15 than \$5 nor more than \$100 per year which shall be paid to the city, village or town  
16 treasurer before the license is issued.

17          **SECTION 6.** 134.65 (5) of the statutes is amended to read:

18           134.65 (5) Any person violating this section shall be fined not more than \$100  
19 ~~\$1,000~~ nor less than ~~\$25~~ \$500 for the first offense and not more than ~~\$200~~ \$5,000 nor  
20 less than ~~\$25~~ \$1,000 or imprisoned not exceeding 180 days or both for the 2nd or  
21 subsequent offense. ~~If upon such 2nd or subsequent violation, the person so violating~~  
22 ~~this section was personally guilty of a failure to exercise due care to prevent violation~~  
23 ~~thereof, the person shall be fined not more than \$300 nor less than \$25 or imprisoned~~  
24 ~~not exceeding 60 days or both. Conviction~~ Upon conviction of a 2nd or subsequent  
25 offense, the court shall immediately terminate the license of the person convicted of

1 being personally guilty of such failure to exercise due care and the person shall not  
2 be entitled to another license hereunder for a period of 5 years thereafter, nor shall  
3 the person in that period act as the servant or agent of a person licensed hereunder  
4 for the performance of the acts authorized by such license.

5 **SECTION 7.** 134.66 (1) (a) of the statutes is amended to read:

6 134.66 (1) (a) "Cigarette" has the meaning given in s. 139.30 (1) (1m).

7 **SECTION 8.** 134.66 (1) (am) of the statutes is created to read:

8 134.66 (1) (am) "Direct marketer" has the meaning given in s. 139.30 (2n).

9 **SECTION 9.** 134.66 (2) (a) of the statutes is amended to read:

10 134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or  
11 subjobber, no agent, employee or independent contractor of a retailer, direct  
12 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee  
13 of an independent contractor may sell or provide for nominal or no consideration  
14 cigarettes or tobacco products to any person under the age of 18, except as provided  
15 in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph  
16 for the purchase of cigarettes or tobacco products from his or her vending machine  
17 by a person under the age of 18 if the vending machine operator was unaware of the  
18 purchase.

19 **SECTION 10.** 134.66 (2) (am) of the statutes is amended to read:

20 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,  
21 subjobber, no agent, employee or independent contractor of a retailer, direct  
22 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee  
23 of an independent contractor may provide for nominal or no consideration cigarettes  
24 or tobacco products to any person except in a place where no person younger than 18  
25 years of age is present or permitted to enter unless the person who is younger than

1 18 years of age is accompanied by his or her parent or guardian or by his or her spouse  
2 who has attained the age of 18 years.

3 **SECTION 11.** 134.66 (2) (d) of the statutes is amended to read:

4 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber  
5 or retailer, or their employees or agents, may provide cigarettes or tobacco products  
6 for nominal or no consideration to any person under the age of 18.

7 **SECTION 12.** 134.66 (2) (e) of the statutes is amended to read:

8 134.66 (2) (e) No retailer or direct marketer may sell cigarettes in a form other  
9 than as a package or container on which a stamp is affixed under s. 139.32 (1).

10 **SECTION 13.** 134.66 (3m) of the statutes is created to read:

11 134.66 (3m) DEFENSE OF DIRECT MARKETER. Proof of all of the following facts by  
12 a direct marketer who sells cigarettes or tobacco products to a person under the age  
13 of 18 is a defense to any prosecution for a violation under sub. (2) (a):

14 (a) That the direct marketer used a mechanism, approved by the department  
15 of revenue, for verifying the age of the purchaser.

16 (b) That the purchaser falsely represented that he or she had attained the age  
17 of 18 and presented a copy or facsimile of an identification card.

18 (c) That the name and birthdate of the purchaser, as indicated by the purchaser,  
19 matched the name and birthdate on the identification presented under par. (b).

20 (d) That the sale was made in good faith, in reasonable reliance on the  
21 mechanism described in par. (a) and the representation and identification under  
22 pars. (b) and (c), and in the belief that the purchaser had attained the age of 18.

23 **SECTION 14.** 139.30 (1) of the statutes is renumbered 139.30 (1m).

24 **SECTION 15.** 139.30 (1d) of the statutes is created to read:

1           139.30 (1d) “Bonded direct marketer” means any person who acquires  
2           unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages  
3           or other containers, stores them and sells them by direct marketing to consumers for  
4           their own personal use and who may also acquire stamped cigarettes from  
5           manufacturers or distributors for such sales.

6           **SECTION 16.** 139.30 (1s) of the statutes is created to read:

7           139.30 (1s) “Consumer” means any individual who receives cigarettes for his  
8           or her personal use or consumption or any individual who has title to or possession  
9           of cigarettes for any purpose other than for sale or resale.

10          **SECTION 17.** 139.30 (2n) of the statutes is created to read:

11          139.30 (2n) “Direct marketer” means a bonded direct marketer or a nonbonded  
12          direct marketer.

13          **SECTION 18.** 139.30 (2p) of the statutes is created to read:

14          139.30 (2p) “Direct marketing” means publishing or making accessible an offer  
15          for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers  
16          in this state, using any means by which the consumer is not physically present at the  
17          time of sale on a premise that sells cigarettes.

18          **SECTION 19.** 139.30 (3) of the statutes is amended to read:

19          139.30 (3) “Distributor” means any person who acquires unstamped cigarettes  
20          from the manufacturer thereof, affixes stamps to the packages or other containers,  
21          stores them and sells them to other permittees or to retailers for resale ~~or and~~ who  
22          acquires may acquire stamped cigarettes from another permittee manufacturers or  
23          distributors for such sales.

24          **SECTION 20.** 139.30 (4n) of the statutes is created to read:

25          139.30 (4n) “Identification card” has the meaning given in s. 134.66 (1) (c).

1           **SECTION 21.** 139.30 (7) of the statutes is amended to read:

2           139.30 (7) “Manufacturer” means any person who directly manufactures  
3 cigarettes for the purpose of sale, including the authorized agent of a person who  
4 directly manufactures cigarettes for the purpose of sale.

5           **SECTION 22.** 139.30 (8d) of the statutes is created to read:

6           139.30 (8d) “Nonbonded direct marketer” means any person who acquires  
7 stamped cigarettes from the manufacturers or distributors, stores them, and sells  
8 them by direct marketing to consumers for their own personal use.

9           **SECTION 23.** 139.30 (8s) of the statutes is created to read:

10          139.30 (8s) “Person” means any individual, sole proprietorship, partnership,  
11 limited liability company, corporation, or association, or any owner of a single-owner  
12 entity that is disregarded as a separate entity under ch. 71.

13          **SECTION 24.** 139.30 (10) of the statutes is amended to read:

14          139.30 (10) “Retailer” ~~means any person who sells, exposes for sale or possesses~~  
15 ~~with intent to sell to consumers any cigarettes~~ has the meaning given in s. 134.66 (1)  
16 (g).

17          **SECTION 25.** 139.32 (1) of the statutes is amended to read:

18          139.32 (1) The tax imposed by s. 139.31 (1) shall be paid. To evidence the  
19 payment, the department shall provide stamps. A person who has paid the tax shall  
20 affix stamps of the proper denomination to each package in which cigarettes are  
21 packed, prior to the first sale within this state. First sale does not include a sale by  
22 a manufacturer to a distributor or to a bonded direct marketer or by a distributor to  
23 a permittee who has obtained department approval as provided for in s. 139.321 (1)  
24 (a) 2. The tax shall be paid only once on each package or container.

25          **SECTION 26.** 139.32 (4) of the statutes is amended to read:

1           139.32 (4) In lieu of stamps the secretary may authorize impressions applied  
2 by the use of meter machines. The secretary shall prescribe by rule the type of  
3 impression and the kind of machines which may be used.

4           **SECTION 27.** 139.32 (5) of the statutes is amended to read:

5           139.32 (5) Manufacturers, bonded direct marketers, and distributors having  
6 a permit from the secretary who are authorized by the department to purchase tax  
7 stamps shall receive a discount of 1.6% of the tax paid on stamp purchases.

8           **SECTION 28.** 139.32 (5m) of the statutes is amended to read:

9           139.32 (5m) Distributors, bonded direct marketers, and manufacturers shall  
10 pay to the department the cost of printing and shipping those stamps.

11          **SECTION 29.** 139.32 (6) of the statutes is amended to read:

12          139.32 (6) Manufacturers, bonded direct marketers, and distributors having  
13 a permit from the secretary who are authorized by the department to purchase tax  
14 stamps may purchase stamps on credit. The secretary may require manufacturers,  
15 bonded direct marketers, and distributors who purchase stamps on credit to file  
16 under the conditions prescribed by the secretary by rule.

17          **SECTION 30.** 139.321 (1) (intro.) of the statutes is amended to read:

18          139.321 (1) (intro.) It is unlawful for any person to possess ~~in excess of 400~~  
19 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32  
20 (1) and 139.33 (4).

21          **SECTION 31.** 139.321 (1) (a) 1. of the statutes is amended to read:

22          139.321 (1) (a) 1. Manufacturers, bonded direct marketers, distributors or  
23 warehouse operators possessing valid permits issued by the secretary.

24          **SECTION 32.** 139.33 (3) of the statutes is amended to read:

1           139.33 (3) No person other than a member of the armed forces, as specified in  
2           this subsection, a licensed distributor, or a bonded direct marketer who is authorized  
3           by the department to purchase and affix tax stamps may import into this state more  
4           than 400 cigarettes on which the excise tax imposed by s. 139.31 has not been paid  
5           and the container of which does not bear proper stamps. Within 15 days, any such  
6           person importing cigarettes shall file a declaration of such cigarettes imported and  
7           shall remit therewith the tax on such cigarettes imposed by this section. Members  
8           of the armed forces shall not be required to report or pay the tax on cigarettes in their  
9           possession if such cigarettes are issued to them by the U.S. government or any of its  
10          subdivisions or were purchased in any armed forces post exchange or service store  
11          for their personal use or consumption. If the use tax imposed by this section is not  
12          paid when due, it shall become delinquent and the person liable for it shall pay, in  
13          addition, a penalty of \$25 for each 200 cigarettes. Interest on the delinquent tax and  
14          penalty shall accrue at the rate of 1.5% per month or each fraction of a month from  
15          the date the tax became due until paid.

16           **SECTION 33.** 139.34 (1) (a) of the statutes is amended to read:

17           139.34 (1) (a) No person may manufacture cigarettes in this state or sell  
18           cigarettes in this state as a distributor, manufacturer, jobber, vending machine  
19           operator, direct marketer, or multiple retailer and no person may operate a  
20           warehouse in this state for the storage of cigarettes for another person without first  
21           filing an application for and obtaining the proper permit to perform such operations  
22           from the department.

23           **SECTION 34.** 139.34 (1) (b) of the statutes is repealed.

24           **SECTION 35.** 139.34 (1) (c) (intro.) of the statutes is amended to read:



1           139.34 (1) (c) (intro.) ~~Subject to ss. 111.321, 111.322 and 111.335, no~~ No permit  
2 under this section may be granted to any person to whom any of the following applies:

3           **SECTION 36.** 139.34 (1) (c) 1. to 6. of the statutes are repealed.

4           **SECTION 37.** 139.34 (1) (c) 1m. of the statutes is created to read:

5           139.34 (1) (c) 1m. Subject to ss. 111.321, 111.322, and 111.335, the person has  
6 an arrest record or a conviction record.

7           **SECTION 38.** 139.34 (1) (c) 2m. of the statutes is created to read:

8           139.34 (1) (c) 2m. Subject to ss. 111.321, 111.322, and 111.335, the person has  
9 been convicted of a felony, or as a repeat or habitual offender, unless pardoned.

10          **SECTION 39.** 139.34 (1) (c) 3m. of the statutes is created to read:

11          139.34 (1) (c) 3m. The person has not submitted proof as provided under s.  
12 77.61 (11).

13          **SECTION 40.** 139.34 (1) (cm) of the statutes is created to read:

14          139.34 (1) (cm) The requirements under par. (c) apply to all partners of a  
15 partnership, all members of a limited liability company, all agents, director, and  
16 shareholders, of a limited liability company or corporation, and all officers of a  
17 corporation. Subject to ss. 111.321, 111.322, and 111.335, if a business entity has  
18 been convicted of a crime, the entity may not be issued a permit under this subsection  
19 unless the entity has terminated its relationship with the individuals whose actions  
20 directly contributed to the conviction.

21          **SECTION 41.** 139.34 (3) of the statutes is amended to read:

22          139.34 (3) No distributor or bonded direct marketer may affix stamps to  
23 cigarette packages, as provided in s. 139.32, unless the distributor or bonded direct  
24 marketer certifies to the department, in a manner prescribed by the department,

1 that the distributor or bonded direct marketer purchases cigarettes directly from a  
2 manufacturer.

3 **SECTION 42.** 139.34 (4) of the statutes is amended to read:

4 139.34 (4) A separate permit shall be required of and issued to each class of  
5 permittee and the holder of any permit shall perform only the operations thereby  
6 authorized. Such permit shall not be transferable from one person to another or from  
7 one premises to another. A separate permit shall be required for each place where  
8 cigarettes are stamped or where cigarettes are stored for sale at wholesale ~~or~~,  
9 through vending machines or multiple retail outlets, or by direct marketing.

10 **SECTION 43.** 139.34 (6) of the statutes is amended to read:

11 139.34 (6) A vending machine operator or a multiple retailer may acquire  
12 unstamped cigarettes from the manufacturers thereof and affix the stamps to  
13 packages or other containers only if the vending machine operator or multiple  
14 retailer also holds a permit as a distributor or bonded direct marketer.

15 **SECTION 44.** 139.34 (8) of the statutes is amended to read:

16 139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on  
17 the premises described in the permit. The warehouse permit shall not authorize the  
18 holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a  
19 manufacturer, bonded direct marketer, or distributor may be delivered only to a  
20 person holding a permit as a manufacturer ~~or~~, distributor, or bonded direct marketer  
21 who is authorized by the department to purchase and affix tax stamps.

22 **SECTION 45.** 139.345 of the statutes is created to read:

23 **139.345 Direct marketing.** (1) (a) (intro.) No person may sell cigarettes to  
24 consumers in this state as a direct marketer or solicit sales of cigarettes to consumers  
25 in this state by direct marketing unless the person has obtained a permit from the

1 department to make such sales or solicitations. The person shall file an application  
2 for a permit under this subsection with the department, in the manner prescribed  
3 by the department, and shall submit the following fee with the application:

4 1. If the person sells less than 600,000 cigarettes annually to consumers in this  
5 state by direct marketing, \$500.

6 2. If the person sells 600,000 or more cigarettes annually to consumers in this  
7 state by direct marketing, \$1,000.

8 (b) A permit issued under par. (a) expires on December 31 of each year.

9 (c) The department may not issue a permit to a person under par. (a) unless the  
10 person certifies to the department, in the manner prescribed by the department, that  
11 the person shall acquire stamped cigarettes from a licensed distributor or  
12 unstamped cigarettes from the manufacturer thereof, pay the tax imposed under this  
13 subchapter on all unstamped cigarettes and affix stamps to the cigarette packages  
14 or containers as provided under s. 139.32 (1), store such packages or containers, and  
15 sell only such packages or containers to consumers in this state by direct marketing;  
16 or acquire cigarettes from a distributor, to the packages or containers of which  
17 stamps have been affixed as provided under s. 139.32 (1), and sell only such packages  
18 or containers to consumers in this state by direct marketing.

19 (d) No person may be issued a permit under this subsection unless the person  
20 certifies to the department, in the manner prescribed by the department, that all  
21 cigarette sales to consumers in this state shall be credit card transactions; that the  
22 invoices and all means of solicitation for all shipments of cigarette sales from the  
23 person shall bear the person's name and address and permit ultimately issued under  
24 this subsection; and that the person shall provide the department any information  
25 the department considers necessary to administer this section.

1           (2) (a) No person may purchase tax stamps in excess of the number of cigarette  
2 sales specified in his or her permit under sub. (1) (a) unless the person pays the  
3 permit fee under sub. (1) (a) that is applicable to the excess amount.

4           (b) No person may sell cigarettes in excess of the number of cigarette sales  
5 specified in his or her permit under sub. (1) (a) unless the person pays the permit fee  
6 under sub. (1) (a) that is applicable to the excess sales. Any person who sells  
7 cigarettes in excess of the number of cigarette sales specified in his or her permit  
8 shall pay a penalty to the department of \$1,000 or an amount that is equal to \$50 for  
9 every 200 cigarettes, or fraction of 200 cigarettes, whichever is greater.

10          (3) (a) No person may sell cigarettes to consumers in this state by direct  
11 marketing unless the tax imposed under s. 139.31 (1) is paid on such cigarettes and  
12 stamps are affixed to the cigarette packages or containers as provided under s.  
13 139.32.

14          (b) No person may sell cigarettes to consumers in this state by direct marketing  
15 unless the tax imposed under s. 77.52 or 77.53 is paid on the sale of such cigarettes.

16          (c) No person may sell cigarettes to consumers in this state by direct marketing  
17 unless the cigarette brands are approved by the department and listed in the  
18 directory of certified tobacco product manufacturers and brands as provided under  
19 s. 895.12 (2) (b).

20          (4) No person may sell cigarettes to a consumer in this state by direct  
21 marketing unless the person verifies the consumer's identity and that the consumer  
22 is at least 18 years of age by any of the following methods:

23           (a) The person uses a database, approved by the department, that includes  
24 information based on public records to verify the consumer's age and identity.

1 (b) The person receives from the consumer, at the time of purchase, a notarized  
2 copy of an identification card, the name specified on the identification matches the  
3 name of the consumer, and the birth date on the identification verifies that the  
4 purchaser is at least 18 years of age.

5 (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),  
6 for verifying the age and identity of a consumer that is approved by the department.

7 (5) Any person who, without having a valid permit under sub. (1), sells or  
8 solicits sales of cigarettes to consumers in this state by direct marketing shall pay  
9 a penalty to the department of \$5,000 or an amount that is equal to \$50 for every 200  
10 cigarettes, or fraction of 200 cigarettes, sold to consumers in this state by direct  
11 marketing, whichever is greater.

12 (6) (a) No sale of cigarettes to a consumer in this state by direct marketing may  
13 exceed 10 cartons for each invoice or 20 cartons in a 30-day period for each purchaser  
14 or address.

15 (b) Any person who sells cigarettes that exceed the maximum amounts under  
16 par. (a) shall pay a penalty to the department of \$5,000 or an amount that is equal  
17 to \$50 for every 200 cigarettes, or major fraction of 200 cigarettes, sold above the  
18 maximum amounts, whichever is greater.

19 (c) Any person who purchases cigarettes that exceed the maximum amounts  
20 under par. (a) shall apply for a permit under s. 139.34 and shall pay a penalty to the  
21 department of \$25 for every 200 cigarettes, or fraction of 200 cigarettes, purchased  
22 above the maximum amounts.

23 (7) No cigarettes may be shipped to a person who is under 18 years of age and  
24 no cigarettes may be shipped to a post-office box. Every package used to ship  
25 cigarettes that are sold as provided under this section and delivered to a person in

1 this state shall be clearly labeled to indicate that the package contains cigarettes and  
2 may not be delivered to a person who is under 18 years of age.

3 **SECTION 46.** 139.35 (1) of the statutes is amended to read:

4 139.35 (1) TRANSFERS. No person may give, sell or lend any stamps to another  
5 and no person may accept, purchase or borrow any stamps from another. All sales  
6 and transfers of stamps may be made only by the secretary to permit holding  
7 manufacturers and, distributors, and bonded direct marketers who are authorized  
8 by the department to purchase and affix tax stamps.

9 **SECTION 47.** 139.37 (1) (a) of the statutes is amended to read:

10 139.37 (1) (a) No person shall sell cigarettes or ~~take orders for cigarettes for~~  
11 ~~resale~~ solicit cigarette sales in this state ~~for any manufacturer or permittee without~~  
12 ~~first obtaining a~~ unless the person has filed an application for and obtained a valid  
13 certificate under s. 73.03 (50) and a salesperson's permit from the department of  
14 revenue. No manufacturer or permittee shall authorize any person to sell cigarettes  
15 ~~or take orders for cigarettes~~ solicit cigarette sales in this state ~~without first having~~  
16 ~~such person secure~~ unless the person has filed an application for and obtained a valid  
17 certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize  
18 the sale or solicitation of cigarettes in this state unless the person has filed an  
19 application for and obtained a valid certificate under s. 73.03 (50) and a valid permit  
20 under s. 139.34. The department shall issue the required number of permits to  
21 ~~manufacturers and permittees~~ who hold a valid certificate issued under s. 73.03 (50).  
22 Each application for a permit shall disclose the name and address of the employer  
23 or the person for whom the sales person is soliciting and such permit shall remain  
24 effective only while the salesperson represents such named employer or person. If  
25 such salesperson is thereafter employed by another ~~manufacturer or permittee~~

1 person, the salesperson shall obtain a new salesperson's permit. Each ~~manufacturer~~  
2 and permittee shall notify the department within 10 days after the resignation or  
3 dismissal of any such salesperson holding a permit.

4 **SECTION 48.** 139.38 (1) of the statutes is amended to read:

5 139.38 (1) Every manufacturer located out of the state shall keep records of all  
6 sales of cigarettes shipped into this state. Every manufacturer located in the state  
7 shall keep records of production, sales and withdrawals of cigarettes. Every  
8 distributor and direct marketer shall keep records of purchases and sales of  
9 cigarettes. Every manufacturer, bonded direct marketer, and distributor ~~holding a~~  
10 ~~permit from the secretary with the right~~ who is authorized by the department to  
11 purchase and apply stamps shall also keep records of purchases and disposition of  
12 stamps. Every jobber, multiple retailer, and vending machine operator shall keep  
13 records of all purchases and disposition of cigarettes. Every warehouse operator  
14 shall keep records of receipts and withdrawals of cigarettes. All such records shall  
15 be accurate and complete and be kept in a manner prescribed by the secretary. These  
16 records shall be preserved on the premises described in the permit or license in such  
17 a manner as to ensure permanency and accessibility for inspection at reasonable  
18 hours by authorized personnel of the department.

19 **SECTION 49.** 139.38 (1m) of the statutes is created to read:

20 139.38 (1m) Records of purchases and sales of cigarettes under sub. (1) that  
21 are kept by direct marketers shall indicate, for each shipment of cigarettes into this  
22 state in the month preceding the report under sub. (2), the invoice date and number;  
23 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the  
24 manufacturer of the cigarettes shipped and the point of origin; the purchaser's name,  
25 address, and birth date; the name of the person to whom the cigarettes were shipped;

1 the address to which the cigarettes were shipped; and any other information the  
2 department requires.

3 **SECTION 50.** 139.38 (2) of the statutes is amended to read:

4 139.38 (2) (a) Except as provided in par. (b), every permittee manufacturer,  
5 distributor, jobber, and direct marketer shall render a true and correct invoice of  
6 every sale of cigarettes at wholesale and every permittee shall on or before the 15th  
7 day of each calendar month file a verified report of all cigarettes purchased, sold,  
8 received, warehoused or withdrawn during the preceding calendar month.

9 (b) The department may allow any jobber, multiple retailer, nonbonded direct  
10 marketer, or vending machine operator permittee who does not sell cigarettes, except  
11 for those on which the tax under this chapter is paid, to file a quarterly report. The  
12 quarterly report shall be filed on or before the 15th day of the next month following  
13 the close of each calendar quarter. The report shall specify the number of cigarettes  
14 purchased and sold during the preceding calendar quarter.

15 **SECTION 51.** 139.39 (6) of the statutes is amended to read:

16 139.39 (6) Sections 71.74 (1), (2), (10), (11) and (14), 71.77, 71.80 (12), 71.91 (1)  
17 (a) and (c) and (2) to (7), 71.92 and 73.0301 as they apply to the taxes under ch. 71  
18 apply to the taxes under this subchapter. Section 71.74 (13) as it applies to the  
19 collection of the taxes under ch. 71 applies to the collection of the taxes under this  
20 subchapter, except that the period during which notice of an additional assessment  
21 shall be given begins on the due date of the report under this subchapter. Section  
22 78.70 (6) as it applies to personal liability for paying taxes, interest, penalties, and  
23 other charges under ch. 78 applies to personal liability for paying taxes, interest,  
24 penalties, and other charges under this subchapter.

25 **SECTION 52.** 139.395 of the statutes is amended to read:



1           **139.395 Theft of tax moneys.** All cigarette tax moneys received by a  
2 distributor, bonded direct marketer, or manufacturer for the sale of cigarettes on  
3 which the tax under this subchapter has become due and has not been paid are trust  
4 funds in the hands of the distributor, bonded direct marketer, or manufacturer and  
5 are the property of this state. Any distributor, bonded direct marketer, or  
6 manufacturer who fraudulently withholds, appropriates or otherwise uses cigarette  
7 tax moneys that are the property of this state is guilty of theft under s. 943.20 (1),  
8 whether or not the distributor, bonded direct marketer, or manufacturer has or  
9 claims to have an interest in those moneys.

10           **SECTION 53.** 139.40 (2) of the statutes is amended to read:

11           139.40 (2) ~~If cigarettes which do not bear the proper tax stamps or on which~~  
12 ~~the tax has not been paid~~ Cigarettes that are so seized they as provided under sub.  
13 (1) may be given to law enforcement officers to use in criminal investigations or sold  
14 to qualified buyers by the secretary, without notice. If the cigarettes are sold, after  
15 deducting the costs of the sale and the keeping of storing the property, the proceeds  
16 of the sale shall be paid into the state treasury. If the secretary finds that such  
17 cigarettes may deteriorate or become unfit for use in criminal investigations or for  
18 sale or that those uses would otherwise be impractical, the secretary may order them  
19 destroyed or give them to a charitable or penal institution for free distribution to  
20 patients or inmates.

21           **SECTION 54.** 139.44 (3) of the statutes is amended to read:

22           139.44 (3) Any permittee who fails to keep the records required by ss. 139.30  
23 to 139.42 or 139.77 to 139.82 shall be fined not less than \$100 \$500 nor more than  
24 \$500 \$1,000 for the first offense and shall be fined not less than \$1,000 nor more than

1     \$5,000 or imprisoned not more than ~~6 months~~ 180 days or both for the 2nd or  
2     subsequent offense.

3           **SECTION 55.** 139.44 (4) of the statutes is amended to read:

4           139.44 (4) Any person who refuses to permit the examination or inspection  
5     authorized in s. 139.39 (2) or 139.83 may be fined not ~~more~~ less than \$500 nor more  
6     than \$1,000 or imprisoned not more than ~~90~~ 180 days or both. Such refusal shall be  
7     cause for immediate suspension or revocation of permit by the secretary.

8           **SECTION 56.** 139.44 (6m) of the statutes is created to read:

9           139.44 (6m) Any person who manufactures or sells cigarettes in this state  
10     without holding the proper permit issued under this subchapter is guilty of a Class  
11     I felony.

12          **SECTION 57.** 139.44 (7) of the statutes is amended to read:

13          139.44 (7) In addition to the penalties imposed for violation of ss. 139.30 to  
14     139.41 or 139.75 to 139.83 or any of the rules of the department, the permit of any  
15     person convicted of a 2nd or subsequent offense shall be automatically revoked and  
16     ~~he or she, the person~~ shall not be granted another permit for a period of 2 5 years  
17     following such revocation, and, for the 5 year period following revocation, the person  
18     shall not act as the employee or agent of a permittee under this subchapter to perform  
19     acts authorized by any permit issued to the permittee under this subchapter.

20          **SECTION 58.** 139.45 of the statutes is amended to read:

21          **139.45 Prosecutions by attorney general.** Upon request by the secretary  
22     of revenue, the attorney general may represent this state or assist a district attorney  
23     in prosecuting any case arising under this subchapter or under ss. 134.65 and 134.66.

24          **SECTION 59.** 139.75 (2) of the statutes is amended to read:

1           139.75 (2) “Consumer” means any individual who receives tobacco products for  
2 his or her personal use or consumption or any person individual who has title to or  
3 possession of tobacco products ~~in storage for use or other consumption in this state~~  
4 any purpose other than for sale or resale.

5           **SECTION 60.** 139.75 (3g) of the statutes is created to read:

6           139.75 (3g) “Direct marketer” means any person who solicits or sells tobacco  
7 products to consumers in this state by direct marketing.

8           **SECTION 61.** 139.75 (3r) of the statutes is created to read:

9           139.75 (3r) “Direct marketing” means publishing or making accessible an offer  
10 for the sale of tobacco products to consumers in this state, or selling tobacco products  
11 to consumers in this state, using any means by which the consumer is not physically  
12 present on a premise that sells tobacco products.

13           **SECTION 62.** 139.75 (4) (a) of the statutes is amended to read:

14           139.75 (4) (a) Any person in this state engaged in the business of selling tobacco  
15 products ~~in this state~~ who brings, or causes to be brought, into this state from outside  
16 the state any tobacco products for sale;

17           **SECTION 63.** 139.75 (4) (c) of the statutes is amended to read:

18           139.75 (4) (c) Any person outside this state engaged in the business of selling  
19 tobacco products ~~outside this state~~ who ships or transports tobacco products to  
20 retailers in this state to be sold by those retailers.

21           **SECTION 64.** 139.75 (4) (cm) of the statutes is created to read:

22           139.75 (4) (cm) Any person outside this state engaged in the business of selling  
23 tobacco products who ships or transports tobacco products to consumers in this state.

24           **SECTION 65.** 139.75 (4n) of the statutes is created to read:

25           139.75 (4n) “Identification card” has the meaning given in s. 134.66 (1) (c).

1           **SECTION 66.** 139.75 (5s) of the statutes is created to read:

2           139.75 (5s) “Person” means any individual, sole proprietorship, partnership,  
3           limited liability company, corporation, or association, or any owner of a single-owner  
4           entity that is disregarded as a separate entity under ch. 71.

5           **SECTION 67.** 139.75 (7) of the statutes is amended to read:

6           139.75 (7) “Retail outlet” means each place of business from which tobacco  
7           products are sold to consumers by a retailer.

8           **SECTION 68.** 139.75 (8) of the statutes is amended to read:

9           139.75 (8) “Retailer” ~~means any person engaged in the business of selling~~  
10          ~~tobacco products to ultimate consumers~~ has the meaning given in s. 134.66 (1) (g).

11          **SECTION 69.** 139.75 (12) of the statutes is amended to read:

12          139.75 (12) “Tobacco products” means cigars; cheroots; stogies; periques;  
13          granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff;  
14          snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos;  
15          shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds  
16          and forms of tobacco prepared in such manner as to be suitable for chewing or  
17          smoking in a pipe or otherwise, or both for chewing and smoking; but “tobacco  
18          products” does not include cigarettes, as defined under s. 139.30 ~~(1)~~ (1m).

19          **SECTION 70.** 139.76 (3) of the statutes is created to read:

20          139.76 (3) Except as provided in sub. (2), no person may possess tobacco  
21          products in this state unless the tax imposed under sub. (1) is paid on such tobacco  
22          products.

23          **SECTION 71.** 139.78 (1m) of the statutes is created to read:

1           139.78 (1m) Except as provided in s. 139.76 (2), no person other than a  
2 distributor with a valid permit under s. 139.79 may import into this state tobacco  
3 products for which the tax imposed under s. 139.76 (1) has not been paid.

4           **SECTION 72.** 139.79 (title) of the statutes is amended to read:

5           **139.79 (title) Permits; distributor; direct marketer; subjobber.**

6           **SECTION 73.** 139.79 (1) of the statutes is amended to read:

7           139.79 (1) No person may engage in the business of a distributor, direct  
8 marketer, or subjobber of tobacco products at any place of business unless that  
9 person has filed an application for and obtained a permit from the department to  
10 engage in that business at such place.

11          **SECTION 74.** 139.79 (2) of the statutes is amended to read:

12          139.79 (2) Section 139.34 (1) ~~(b)~~ (c) to (f), (4) and (9) applies to the permits under  
13 this section.

14          **SECTION 75.** 139.795 of the statutes is created to read:

15          **139.795 Direct marketing.** (1) (a) No person may sell tobacco products by  
16 direct marketing to consumers in this state as a direct marketer or solicit sales of  
17 tobacco products to consumers in this state by direct marketing unless the person has  
18 obtained a permit from the department to make such sales or solicitations. The  
19 person shall file an application for a permit under this subsection with the  
20 department, in the manner prescribed by the department, and shall submit a \$500  
21 fee with the application.

22          (b) No person may be issued a permit under this subsection unless the person  
23 holds a valid distributor's permit under s. 139.79. Section 139.34 (1) (c) to (f), (7), and  
24 (9), as it applies to permits issued under s. 139.34, applies to permits issued under  
25 this subsection.

1 (c) A permit issued under this subsection expires on December 31 of each year.

2 (d) No person may be issued a permit under this subsection unless the person  
3 certifies to the department, in the manner prescribed by the department, that all  
4 tobacco product sales to consumers in this state shall be credit card transactions; that  
5 the invoices and all means of solicitation for all shipments of tobacco product sales  
6 from the person shall bear the person's name and address and permit ultimately  
7 issued under this subsection; and that the person shall provide the department any  
8 information the department considers necessary to administer this section.

9 (2) No person may sell tobacco products to consumers in this state by direct  
10 marketing unless the tax imposed under s. 139.76, and under s. 77.52 or 77.53, has  
11 been paid with regard to such products.

12 (3) No person may sell tobacco products to a consumer in this state by direct  
13 marketing unless the person does all of the following:

14 (a) The person uses a mechanism, approved by the department, to verify the  
15 consumer's age.

16 (b) The person receives from the consumer, at the time of purchase, a copy or  
17 facsimile of an identification card, the name specified on the identification matches  
18 the name of the consumer.

19 (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),  
20 for verifying the age and identity of a consumer that is approved by the department.

21 (4) Any person who, without having a valid permit under sub. (1), sells or  
22 solicits sales of tobacco products to consumers in this state by direct marketing shall  
23 pay a penalty to the department of \$5,000 or an amount that is equal to 50 percent  
24 of the tax due on the tobacco products the person sold, without having a valid permit  
25 under sub. (1), to consumers in this state by direct marketing, whichever is greater.

1           (5) No tobacco products may be shipped or delivered to a person who is under  
2           18 years of age and no tobacco products may be shipped to a post-office box. Every  
3           package used to ship tobacco products that are sold as provided under this section  
4           and delivered to a person in this state shall be clearly labeled to indicate that the  
5           package contains tobacco products and may not be delivered to a person who is under  
6           18 years of age.

7           **SECTION 76.** 139.81 (1) of the statutes is amended to read:

8           139.81 (1) No person may sell ~~or take orders for~~ tobacco products ~~for resale or~~  
9           solicit sales of tobacco products in this state ~~for any manufacturer or permittee~~  
10          unless the person has filed an application for and obtained a valid certificate under  
11          s. 73.03 (50) and a salesperson's permit from the department. No ~~manufacturer or~~  
12          permittee shall authorize any person to sell ~~or take orders for~~ tobacco products ~~or~~  
13          solicit sales of tobacco products in this state unless the person has filed an application  
14          for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit.  
15          No person may authorize the sale or solicitation of tobacco products in this state  
16          unless the person has filed an application for and obtained a valid certificate under  
17          s. 73.03 (50) and a valid permit under s. 139.79. Each application for a permit shall  
18          disclose the name and address of the employer or the person for whom the  
19          salesperson is soliciting and shall remain effective only while the salesperson  
20          represents the named employer or person. If the salesperson is thereafter employed  
21          by another ~~manufacturer or permittee~~ person the salesperson shall obtain a new  
22          salesperson's permit. Each ~~manufacturer and~~ permittee shall notify the department  
23          within 10 days after the resignation or dismissal of any salesperson holding a permit.

24          **SECTION 77.** 139.81 (2) of the statutes is amended to read:

1           139.81 (2) Section 139.34 (1) ~~(b)~~ (c) to (e) applies to the permits under this  
2 section.

3           **SECTION 78.** 254.911 (1) of the statutes is amended to read:

4           254.911 (1) “Cigarette” has the meaning given in s. 139.30 ~~(1)~~ (1m).

5           **SECTION 79.** 891.455 (4) of the statutes is amended to read:

6           891.455 (4) The presumption under sub. (2) for cancers caused by smoking or  
7 tobacco product use shall not apply to any municipal fire fighter who smokes  
8 cigarettes, as defined in s. 139.30 ~~(1)~~ (1m), or who uses a tobacco product, as defined  
9 in s. 139.75 (12), after January 1, 2001.

10           **SECTION 9441. Effective dates; revenue.**

11           (1) DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS. The repeal of  
12 section 139.34 (1) (b) and 139.34 (1) (c) 1. to 6. of the statutes, the renumbering of  
13 section 139.30 (1) of the statutes, the amendment of sections 77.61 (11), 134.65 (1),  
14 134.65 (2) (a), 134.65 (5), 134.66 (1) (a), 134.66 (2) (a), 134.66 (2) (am), 134.66 (2) (d),  
15 134.66 (2) (e), 139.30 (3), 139.30 (7), 139.30 (10), 139.32 (1), 139.32 (4), 139.32 (5),  
16 139.32 (5m), 139.32 (6), 139.321 (1) (intro.), 139.321 (1) (a) 1., 139.33 (3), 139.34 (1)  
17 (a), 139.34 (1) (c) (intro.), 139.34 (3), 139.34 (4), 139.34 (6), 139.34 (8), 139.35 (1),  
18 139.37 (1) (a), 139.38 (1), 139.38 (2), 139.39 (6), 139.395, 139.40 (2), 139.44 (3), 139.44  
19 (4), 139.44 (7), 139.45, 139.75 (2), 139.75 (4) (a), 139.75 (4) (c), 139.75 (7), 139.75 (8),  
20 139.75 (12), 139.79 (title), 139.79 (1), 139.79 (2), 139.81 (1), 139.81 (2), 254.911 (1) and  
21 891.455 (4), of the statutes and the creation of sections 134.65 (1n), 134.65 (1r),  
22 134.66 (1) (am), 134.66 (3m), 139.30 (1d), 139.30 (1s), 139.30 (2n), 139.30 (2nn),  
23 139.30 (2p), 139.30 (4n), 139.30 (8s), 139.34 (1) (c) 1m., 139.34 (1) (c) 2m., 139.34 (1)  
24 (c) 3m., 139.34 (1) (cm), 139.345, 139.38 (1m), 139.44 (6m), 139.75 (3g), 139.75 (3r),



1 139.75 (4) (cm), 139.75 (4n), 139.75 (5s), 139.76 (3), 139.78 (1m) and 139.795 of the  
2 statutes take effect on July 1, 2006.

3 (END)